
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

TYRONE NUNN, SR.,

Petitioner,

versus

M. MARTIN,

Respondent.

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CIVIL ACTION NO. 1:11-CV-571

**MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff, Tyrone Nunn, Sr., an inmate currently confined at FCI Beaumont Low, proceeding *pro se*, filed this *Bivens*¹ type action against defendant Mark Martin.

The Court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends plaintiff's motion for leave to proceed *in forma pauperis* should be denied and this civil rights action dismissed without prejudice to plaintiff's right to re-file this suit upon paying the full \$350.00 filing fee.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, and pleadings. Plaintiff filed objections to the Magistrate Judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the Court finds the objections lacking in merit. To the extent plaintiff calls into question the constitutionality of § 1915(g), the Fifth Circuit has considered and

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See Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971).

upheld its constitutionality. *See Carson v. Johnson*, 112 F.3d 818, 821-22 (5th Cir. 1997); *see also Rivera v. Allin*, 144 F.3d 719, 731 (11th Cir. 1998) (upholding the constitutionality of § 1915(g)) and *Jones v. Bock*, 549 U.S. 199 (2007) (Supreme Court abrogated *Rivera* but only to the extent *Rivera* required an inmate to plead exhaustion of remedies in his complaint).

ORDER

Accordingly, the objections of petitioner are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

SIGNED at Beaumont, Texas, this 11th day of January, 2012.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE